HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.370 of 2007

Between:

The Chairman and Managing Director,
A.P. Power Generation Corporation Limited,
Vidyuth Soudha, Somajiguda, Hyderabad
and three others

… Appellants

And

P. Rambabu and 50 others

… Respondents

::JUDGMENT::

Counsel for the appellants: Shri G. Vidyasagar

Counsel for respondent Nos.1 to 50: Smt.Bobba Vijalakshmi

May 01, 2007

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Per G.S. Singhvi, CJ

Whether the respondents, who were engaged as contract labours in connection with the execution of various projects undertaken by the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board'), are entitled to be absorbed in the services of Andhra Pradesh Power Generation Corporation Limited (for short, 'the Corporation') is the question which arises for determination in this appeal filed by the Chairman and Managing Director of the Corporation and three others against order dated 8-3-2007 passed by the learned Single Judge in Writ Petition No.9057 of 2006.

The respondents were engaged as contract labour in 33 abolished categories of employment of the Board. They claimed absorption in the regular cadre as per the scheme framed by the Board vide B.P.No.272 dated 31-12-1997. In support of their claim, the respondents relied on the recommendations made by 3-men committee constituted by the Board. Their claim was rejected by the Corporation. The dispute raised by the respondents was referred by the Government of Andhra Pradesh to Industrial Tribunal-cum-Labour Court, Warangal (for short, 'the Labour Court'). The same was registered as I.D.No.105 of 2002. The learned Presiding Officer of the Labour Court upheld the claim of the respondents and passed award dated 9-9-2005 in their favour. Paragraphs 12 and 13 of the award read as under:

> 12. A reading of the above decision make it clear that a workman under a contractor is not entitled to automatic absorption merely because of notification has been issued under Section 10 (1) C.L.R.A. Act prohibiting employment of contract labourer. But the industrial dispute has to be brought

before the court in regard to conditions of service, then the Labour Court has to consider the question whether the contractor has been employed to undertake to execute a work for a given result or for supply of contract labourers for the work. It has to be decided as to whether the said contract is genuine contract or it is only a ruse to evade compliance of various beneficiary legislation so as to deprive workers thereunder. If the court finds that the contract is not genuine and then the labourers have to be treated as employees of principal employer and direction has to be given to regularise their services. But if the contract is found to be genuine and if prohibition is given under notification, then it has to be seen whether for executing such work the principal employer intends to employee regular workman, he shall give preference to absorb the erstwhile contract labourer. Here the works that have been executed by M/s.Mech Engineers and Erectors, Public Construction Works, Public Construction Limited, P.V. Lakshmipathi, G. Madusudhana Reddy, M/s.Seleni Enterprises, M/s.Kalyani Enterprises and Srinivas Coal Transporters are perennial in nature. Constantly these works have to be carried out at coal plant, soot blowing, Ash plant, coal mill, burner floor etc. Unless these works are not carried out for all the 365 days there would not be any power generation. Breaking of coal, soot blowing, coal feeding, burner floor, cleaning are necessary throughout the year for which permanent employees are necessary. Since it would be cheap and costless the respondent had been engaging the contractors for executing these works, which are essential for power generation. They can employ these workmen directly for these purposes. Even though these contractors supplied the workmen they are under the direct and constant supervision of the officers of the respondent. Only for mere contract sake the L.S. agreement has been executed between the contractors and respondent for execution of these essential works. In fact all these workmen will come under the category of helpers, which is an abolished category No.31. There is no criteria definition for the word ‘helper’. Unless these persons extend their help for execution of works the respondent cannot function. In fact the committee recommended the names of

these 50 persons for absorption. But the respondent rejected the recommendation of the committee. The contention of the respondent's counsel that the recommendations of the committee are not binding on the respondent and respondent is entitled to scrutinise the recommendations made by the committee and can reject the recommendations. But the respondent only in order to ascertain the eligibility or otherwise of the workmen constituted the committee. When once the Committee recommends the petitioners' eligibility for absorption, the respondent is bound to accept the recommendations. In a decision between Food Corporation of India Workers Union v. Food Corporation of India and another reported in 2001-II-LLJ-1177 the Supreme Court of India observed as follows:

> "Pursuant to our earlier order dated 1-11-1999 a moot question regarding identification of 177 eligible workmen was entrusted to Justice Bhagabati Prosad Banerjee, a retired Judge of the Calcutta High Court. The learned Judge, after hearing the parties concerned and after undertaking a marathon exercise spread over three months by camping at the site at Siliguri and by even going to the houses of the claimants concerned, has given his report dated
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> 24-2-2000. Ultimately according to the report 23 persons listed at p.6 of the report were duly identified and found to be eligible for absorption. In our order of 1-11-1999 it was made clear that once this exercise is completed and the report is submitted to this Court, it will be treated as final. We accept the said report. Consequently, the aforesaid report has to be treated as final and binding on the parties before us."

13. Relying on the above decision it has been contended by the advocate appearing for the petitioners that once a committee has been appointed by the respondents for conducting enquiry and to send its recommendation regarding eligibility, the respondent has to accept the report and has to absorb the workmen, who are entitled for absorption. The respondents refused to accept the recommendations made in favour of petitioners 1 to 26, 44 and 50 because they were not

on rolls on 23-9-96, the cut off date. As earlier said, the respondent can't take the cut off date as a guiding factor to deny the genuine eligibility. These petitioners were working prior to 23-9-96 and subsequent to 30-9-96 in the prohibited category i.e. burner floor. They should have worked at the burner floor itself even for all these days, but for the deputation made by the Superintending Engineer to work at welding unit since urgent works have to be attended in that unit. Hence, their cases are genuine cases and they cannot deny absorption. The other petitioners have been working under different contractors at Ash plant, coal plant, coal mill, burner floor, soot blowing etc. which are also under one of the prohibited categories. Absorption is denied by the respondent because one of the petitioners took weekly off on 23-9-96. These are the silly objections under which the genuine claim has been rejected. These works are perennial in nature. After taking into consideration all these aspects the Advisory Board recommended for absorption of these category of works. Since these petitioners have been working in these categories, they are entitled for absorption. Apart from it there is no contra evidence placed by the respondents to substantiate that the works attended by the petitioners are not of a perennial in nature. On the other hand, the contractors stated in their evidence that their works are all permanent nature and regular. They have been supplying these labourers for attending these works. Hence, I hold that the petitioners have been working in the prohibited categories of employment and they are entitled for absorption. Hence, these two points are therefore found in favour of the petitioners and against the respondents."

The appellant challenged the award in Writ Petition No.9057 of 2006 mainly on the ground that as on the cut-off date specified in the scheme framed by the Board, the respondents were not working as contract labours.

The learned Single Judge referred to the principles laid down by the Supreme Court in **Steel Authority of India Ltd. v. National**

Union Waterfront Workers[1] and held that the respondents cannot claim automatic absorption. He then noted that the 3-men committee had examined the genuineness of the claim made by the respondents and recommended their absorption and held that deputation of the respondents for a short period of eight days was managed by the Superintending Engineer with a view to deprive them of the benefit of the scheme circulated vide G.O.Ms.No.41, dated 23-9-1996.

We have heard Shri G. Vidyasagar and carefully scanned the record. The finding recorded by the learned Presiding Officer of the Labour Court, which has been approved by the learned Single Judge, that the respondents were sent on deputation on 23-9-1996 with a view to scuttle their claim for absorption is a pure finding of fact. The same is based on a comprehensive appreciation of evidence produced by the parties. This is evinced from the following extracts of the order of the learned Single Judge:

> "The deputation seems to be from 23-9-1996 to 30-9-1996. The Divisional Engineer issued a Memo stating that 27 workmen were deputed to work in HP/LP welding works from 23-9-1996 to 30-9-1996. Insofar as others are concerned, there was no dispute that they were on the rolls as on 23-9-1996. Under those circumstances, the Tribunal held that the Management cannot contend that subsequent to 23-9-1996 they can engage contract labour in any one of the prohibited categories by prescribing a cut-off date for absorption and it cannot issue a proceeding putting forth the cut-off date for the purpose of absorption and if the workmen are employed even prior to 23-9-1996 or on or after 23-9-1996 through contractors in any of the prohibited categories, they are entitled for absorption. The evidence of M.W.1 is very interesting in this regard. He deposed that he had no personal knowledge as to whether the workmen were working and who are the contractors engaged them. However, on putting some

leading questions, he accepted that he knows the contractor's name i.e. Mech Engineers. May be, the workmen were working under them. He has also admitted that bona fide certificates are relevant material to consider the absorption of contract labour. The recommendations made by the committee were not placed before the Tribunal in spite of allowing time. He gave evidence on 23-9-2003, on which date, he promised to produce the file and recommendation made by the committee. But, on 23-10-2003 when he entered into the box for cross-examination, he stated that he was not filing the recommendations of the committee report. The respondents 1 to 50-workmen were recommended by the committee as their work was nearer to 33 abolished categories, even though they did not satisfy strictly in accordance with the guidelines. This is an improvement of his earlier version, after one month. He deposed that it is not true to suggest that he gave evidence contrary to the recommendations of the committee. He further deposed that the committee did not show any discrimination against any contract labour including the respondents. Out of 104 contract labour recommended for absorption, 54 persons were selected. However, as stated above, the recommendations of the committee were not filed into the Tribunal. On the other hand, the 1st respondent-W.W.1 gave a very elaborative and narrative evidence of the facts. He deposed that the names of respondents 1 to 50 herein were included in the 104 persons recommended by the committee and though their names were recommended, they were not absorbed. Nothing much has been elicited by the Management from the evidence of W.W.1. Apart from this, the contractors, who were examined as W.Ws.3 to 5 have categorically asserted that 50 workmen had worked under them and the persons worked under them are in the 33 abolished categories of employment and they were not absorbed as per G.O.Ms.No.41, dated 23-9-1996. W.W.4 categorically asserted that the works in burden floor will come under 33 abolished categories of employment and 28 workers have not worked in burner floor from 23-9-1996 to 30-9-1996 and they were deputed to emergency unit as directed by the

Superintending Engineer. Further, on 30-9-1996 they came back to burner floor and worked thereat as usual. It was further stated that from the beginning till the date of deposition, the nature of the work was the same in burner floor and some workers worked in burner floor were absorbed as per G.O.Ms.No.41, dated 23-9-1996. He gave some names of those persons. He deposed that the burner floor work in KTPS is continuous and perennial in nature. This all would show that the respondent-workmen were there on the rolls as on the date of issuance of G.O.Ms.No.41, dated 23-9-1996 and they fall into the 33 abolished categories of employment with the principal employer i.e. A.P. Genco. Further, the committee had recommended their names for absorption. The only ground on which the case of the respondent-workmen was not considered is that they were not on the rolls as on 23-9-1996, which was disproved in the evidence. Therefore, the question that these workmen are not entitled for automatic absorption simply because G.O.Ms.No.41, dated 23-9-1996 has been issued does not arise. The committee has recommended the names of the workmen on identifying them as genuine workers working in the abolished category. Therefore, it does not lie in the mouth of the Management to say that the workmen are not entitled for automatic absorption. The posts were identified and thereafter, the committee identified the persons, who had worked in those vacancies and though filled up about 54 vacancies, the case of respondents 1 to 50 were not considered on some flimsy grounds. Before this Court, the principal employer did not assert that the work, which was carried out through the contract labour, can be carried out only by engaging a few of them and not all of them. This itself shows that the committee has identified the number of workers required for being employed from among the contract labour and respondents 1 to 50 were already identified. Therefore, the question of further giving leverage to the petitioners for considering absorption of the workmen does not arise. All of the workmen (respondents 1 to 50) are entitled for absorption as per the reference. The reference was only as to whether the workmen are entitled for

absorption as per G.O.Ms.No.41, dated 23-9-1996. The Tribunal has rightly addressed the issue and declared that the workmen are entitled for absorption into the service of principal employer as per G.O.Ms.No.41, dated 23-9-1996. If really, the writ petitioners are aggrieved by the reference i.e. the way in which it was couched, they could have raised an objection at the earliest point of time, but they did not do so."

Shri G. Vidyasagar could not show that the finding recorded by the Labour Court, which has been approved by the learned Single Judge, suffers from an error of law apparent on the face of the record. He, however, reiterated that the respondents are not entitled to be absorbed because they were not in the services of the Board on the cut-off date i.e. 23-9-1996.

We have considered the submissions of the learned counsel, but have not felt impressed. Once it is held that the deputation of the respondents was stage-managed with a view to deny them the benefit of absorption, it is not possible to find any fault with the direction given by the Labour Court for their absorption in the services of the Corporation because the respondents will be deemed to be in the service of the Board on the cut-off date specified in the scheme.

With the above observation, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.701 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

May 01, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (2001) 7 SCC 1